No. 20245

In the

United States Court of Appeals

For the Ninth Circuit

EDGAR T. WEEKES and CATHERINE H. WEEKES, *Appellants,*

vs.

ATLANTIC NATIONAL INSURANCE CO., a Florida corporation, et al., *Appellees.*

CALIFORNIA STATE AUTO ASSOCIATION INTER-INSURANCE BUREAU, a California corporation, and SAMUEL ROTANZI, *Appellants,*

vs.

ATLANTIC NATIONAL INSURANCE CO., et al., *Appellees.*

ATLANTIC NATIONAL INSURANCE CO., a Florida corporation, *Appellant,*

vs.

CALIFORNIA STATE AUTO ASSOCIATION INTER-INSURANCE BUREAU, a California corporation; SAMUEL ROTANZI; and EDGAR T. WEEKES and CATHERINE H. WEEKES, husband and wife, *Appellees.*

Appeal from the United States District Court
for the District of Arizona

Brief for Appellants California State Automobile Association Inter-Insurance Bureau and Samuel Rotanzi

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STATEMENT OF PLEADINGS AND FACTS DISCLOSING JURISDICTION

Appellant California State Automobile Association Inter-Insurance Bureau (California State) is an inter-insurance bureau with its principal office in the State of California, and is a citizen of that state. Appellant Samuel Rotanzi (Rotanzi) is a citizen of the State of California. Atlantic National Insurance Co. (Atlantic) is a Florida corporation; it was the only plaintiff in the District Court and is an appellant and appellee in this appeal, as are California State and Rotanzi. Edgar T. Weekes and Catherine H. Weekes are citizens of Arizona. They were defendants below with California State and Rotanzi, and are also appellants and appellees on various issues before this court.

The amount in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand Dollars.

All the jurisdictional facts were established in the District Court by the allegations in the second amended complaint (R-2), which allegations were not denied and were in fact admitted.

The District Court had jurisdiction under the provisions of 28 U.S.C.A. § 1332. The judgment of the District Court was rendered by the United States District Court for the District of Arizona on May 13, 1965. All parties before the District Court have appealed from certain portions of said judgment. This Court has jurisdiction upon this appeal to review the said judgment under the provisions of 28 U.S.C.A. § 1291.

STATEMENT OF THE CASE

(Preamble)

Atlantic's seconded amended complaint for declaratory relief sets forth three counts.

The First Count asks the Court to find that a separate, now terminated, suit for property damage in the Superior Court of the State of Arizona in and for the County of Maricopa is a bar to a pending action for personal injuries in the United States District Court. In both actions the Weekes were or are plaintiffs and Rotanzi was or is the defendant.

The District Court found for Weekes and against Rotanzi and California State on this issue. Atlantic, Rotanzi and California State have appealed from the court's decision on this point, said decision being set forth in paragraph 1 of the District Court's Judgment of May 13, 1965. We will later set forth more details as to the facts pertinent to this issue.

The Second Count asks the court to find Rotanzi was an insured of California State, that its insurance was primary to Atlantic's coverage of Rotanzi, and to find that Atlantic's coverage in any event does not exceed $10,000.00 for injury to one person or $20,000.00 for all injuries sustained in one accident. The District Court found that Atlantic's coverage was primary, but that its coverage only extended to $10,000.00 for injury to one person and $20,000.00 for injuries sustained in one accident rather than to its stated policy limits, to-wit: $100,000/$300,000. This decision appears in paragraph 2b of the District Court's Judgment of May 13, 1965. We will set forth more facts below as to this issue, raised by the Second Count and as to which California State and Rotanzi are now appellants, to-wit: the extent of Atlantic's coverage.

The Third Count prays in substance that the court determine that Atlantic's policy affords no coverage to Rotanzi due to an exclusion denying coverage when the driver is "under the influence". It asks in the alternative that if it be determined Atlantic's policy affords coverage, it also be determined that the coverage so provided is limited to the amount of $10,000.00 for injury to any one person and

$20,000.00 for injuries sustained in one accident. The District Court found on this issue that although Rotanzi was afforded coverage under Atlantic's policy, he was only afforded $10,000/$20,000 coverage.

Thus, California State and Rotanzi are appellants as to two issues:

1. Does the previous, separate and now terminated suit for property damage bar the present suit for personal injuries? For identification purposes we shall simply label this as the "res judicata issue", which issue was raised by the First Count of Atlantic's Second Amended Complaint, and decided in paragraph 1 of the Court's Judgment of May 13, 1965. On this point Atlantic is a co-appellant and the Weekes are appellees.

2. Does the insurance coverage afforded Rotanzi extend to the amount set forth in the policy, to-wit $100,000/$300,000, or is there merely $10,000/$20,000 coverage? For identification purposes we shall label this as the "extent of coverage issue", which issue was raised by both the Second and Third Counts of plaintiff's Second Amended Complaint and was decided by paragraph 2(b) of the Court's Judgment of May 13, 1965. On this precise point the Weekes, California State and Rotanzi are appellants and Atlantic is appellee.

A. The Res Judicata Issue

The factual background related to this issue is set forth in the affidavit of Mr. Robert G. Begam (R-34) and in the affidavit of Mr. Jack Anderson (R-37) together with the exhibits to the latter (R-20 through R-53 inclusive). There is no factual dispute as to the chronology of events set forth in these two affidavits.

In substance the following occurred. On March 22, 1963, Mr. Weekes filed an action in the Superior Court of the State of Arizona in and for the County of Maricopa, which

became Cause No. 148506, and was entitled Edgar Weekes, plaintiff, v. Samuel Rotanzi and Jane Doe Rotanzi, husband and wife, defendants. It was alleged in said action that on April 20, 1961, as a proximate result of the negligence of defendant Samuel Rotanzi, the automobile owned by Edgar T. Weekes was damaged in the amount of One Thousand One Hundred One and 52/100 Dollars ($1,101.52) and judgment was sought in that amount. In said action, on or about October 22, 1963, a stipulation of dismissal with prejudice was signed by the counsel representing the defendants Weekes and Rotanzi, respectively, and on October 22, 1965, pursuant to said stipulation, Cause No. 148506 in the Superior Court of the State of Arizona, in and for the County of Maricopa, was dismissed with prejudice.

It is the position of Atlantic, California State and Rotanzi that said dismissal in an action between the same parties and arising out of the same accident bars the present suit by Weekes against Rotanzi for personal injuries.

Perhaps the key document in the record bearing on the issue is a letter from Mr. Anderson, attorney for Rotanzi in the property damage action, to Mr. Andrews, attorney for the Weekes in said action, which letter is dated October 31, 1964, and a copy of which went to Mr. Begam (R-48), attorney for Mr. Weekes in the present personal injury action and in this declaratory judgment action. In this letter Mr. Anderson stated:

> "Now, in delivering these funds to you, Bill [Andrews], I want it clearly understood that we are not in any manner waiving, relinquishing or altering what legal effect, if any, the dismissal of the above captioned matter may have on your client's action that is pending in Federal Court wherein he is represented by Bob Begam."

Thereafter, and on advice of Mr. Begam (R-53), Mr. Weekes signed the draft made payable to him, and the action he brought in the Superior Court was dismissed with prejudice.

B. The Extent of Coverage Issue

Atlantic entered into a contract of driverless car liability insurance with the Hertz Corporation. This insurance contract was in effect on April 20, 1961, and contained the following language:

> "EXCLUSIONS
>
> "This policy does not apply to: . . .
>
> "(D) Any liability of the renter or members of his immediate family, or partners or executive officers of the renter or members of their immediate families, or of the driver, or of the employer of the renter, with respect to bodily damage, sickness, disease or death or damage to property caused in whole or part by an automobile insured hereunder while being used to carry passengers for a consideration, express or implied or while being operated . . .
>
> "(7) By any person under the influence of intoxicants or narcotics."

The accident out of which the pending personal injury action in the United States District Court for the District of Arizona arose occurred on April 20, 1961, while the defendant Samuel Rotanzi was operating an automobile leased by him from the Hertz Corporation. This automobile was covered under Atlantic's policy of driverless car liability insurance. At the time of said accident Rotanzi was operating said automobile under the influence of intoxicants.

SPECIFICATIONS OF ERROR

1. The Stipulation and Order of Dismissal with Prejudice in the Superior Court of the State of Arizona in and

for the County of Maricopa, in Cause No. 148506, does constitute a bar to Cause No. CIV-4906-Phx. in the United States District Court for the District of Arizona and, accordingly, the District Court erred in Paragraph 1 of its Judgment of May 13, 1965.

2. The District Court erred in Paragraph 2(b) of said Judgment entered on May 13, 1965, limiting coverage under the automobile liability insurance policy of Atlantic National Insurance Co. to the sum of $10,000 for injury to one person and $20,000 for injuries sustained in one accident.

SUMMARY OF ARGUMENT

1. The Stipulation and Order of Dismissal with Prejudice in the Superior Court of the State of Arizona in and for the County of Maricopa, in Cause No. 148506, does constitute a bar to Cause No. CIV-4906-PHX. in the United States District Court for the District of Arizona and, accordingly, the District Court erred in Paragraph 1 of its Judgment of May 13, 1965.

2. The District Court erred in Paragraph 2(b) of said Judgment entered on May 13, 1965, limiting coverage under the automobile liability insurance policy of Atlantic National Insurance Co. to the sum of $10,000.00 for injury to one person and $20,000.00 for injuries sustained in one accident.

ARGUMENT

I. The Stipulation and Order of Dismissal With Prejudice in the Superior Court of the State of Arizona in and for the County of Maricopa, in Cause No. 148506 Does Constitute a Bar to Cause No. CIV-4906-PHX. In the United States District Court for the District of Arizona and, Accordingly, the District Court Erred in Paragraph 1 of Its Judgment of May 13, 1965

We believe it is clear that the Order of Dismissal in the property damage action bars the personal injury action. In

Jenkins v. Skelton, 21 Ariz. 663, 192 P. 249, the Arizona Supreme Court clearly held and said that injuries to person and property resulting from the same tort constitutes one and only one cause of action. As is indicated in 62 A.L.R. 2d 982, Arizona is in the substantial majority in taking this position.

What then is the effect of the rule?

It is stated thusly at 62 A.L.R. 2d 988:

> "Unquestionably the most important effect of the single cause of action rule is that it bars one who has sustained simultaneous personal injury and property loss from the same cause and who has prosecuted to judgment a suit for either of his two elements of damage from thereafter suing to recover for the remaining element."

The Weekes, in the District Court proceeding, conclude their analysis of Count I with the following language:

> "The *Restatement* and the case law make it clear that defendants [the Weekes] are entitled to Summary Judgment on Count One for two reasons:
>
> "1. The single cause of action rule is not applicable in cases in which one element of the claim is the subject of insurance and a resulting subrogation interest and the other is not, and
>
> "2. In any event, the failure of Atlantic National to object to the splitting of the claim and to register such objection in the subsequently brought subrogation action is effective as a consent to the splitting of the claim."

Our comments on these conclusions and the apparent position of the Weekes are as follows:

1. The principle set forth in paragraph 1 of the analysis is not the law in Arizona. The law in Arizona is expressed in *Jenkins v. Skelton, supra,* and is directly contrary to the position and argument of the Weekes. It is not the function

of this Court in a diversity action to change the clear law of the State of Arizona. Indeed, the Court is obliged to follow that law, leaving it to the Arizona Courts or legislature to consider such changes in the laws as the Weekes propose.

2. Restatement of Judgment, § 62 provides:

> "Where a judgment is rendered, whether in favor of the plaintiff or of the defendant, which precludes the plaintiff from thereafter maintaining an action upon the original cause of action, he cannot maintain an action upon any part of the original cause of action, although that part of the cause of action was not litigated in the original action, except
>
> "(a) where the procedure adopted by the plaintiff precluded his recovery for the entire claim and this procedure was essential to preserving his rights, or
>
> "(b) where the defendant's fraud or misrepresentation prevented the plaintiff from including the entire claim in the original action, or
>
> "(c) where the defendant consented to the splitting of the plaintiff's cause of action."

The above section is authority directly contrary to the position of the Weekes. It says in substance that if the property damage action is dismissed, then the Weekes cannot thereafter *maintain* the suit for personal injury.

3. While in some other states an exception to the bar caused by splitting causes of actions has been carved out in subrogation actions, to our knowledge this has only occurred where the plaintiff in the property damage action had no rights being resolved. In this case Mr. Weekes personally received $100.00 in the settlement of the property damage action (R-38, paragraph 5; R-38, paragraph 8) and therefore had an interest in the settlement giving rise to the dismissal and received proceeds therefrom.

4. The argument that Atlantic consented to the splitting of the cause of action just doesn't stand up under examination of the facts and documents. Mr. Anderson in his letter to Mr. Begam said in substance (although not in these words) about as clearly as the English language will allow:

> "Mr. Begam, if this check is cashed, I am going to take full advantage of it in the personal injury action." (R-48)

Realizing this, Mr. Begam had Mr. Weekes cash the draft, and Mr. Weekes received the $100.00 which was prayed for in the complaint and not covered by his property insurance.

5. In any event, California State and Rotanzi did not consent to the splitting of the cause of action.

II. The District Court Erred in Paragraph 2(b) of the Judgment Entered May 13, 1965, Limiting Coverage Under the Automobile Liability Insurance Policy of Atlantic to the Sum of $10,000 for Injury to One Person and $20,000 for Injuries Sustained in One Accident

The comments which follow below in regard to this argument have been extracted liberally and for the most part verbatim from portions of the exhaustive brief of Weekes on the same issue in the action below.

This issue involves an interpretation of the insurance policy, the Arizona Financial Responsibility Law, the cases interpreting that statute and similar statutes, and the general considerations of law and public policy relating to this problem.

A. THE STATUTE ON ITS FACE.

A.R.S. 28-1170 B contains the "omnibus clause" provision and provides as follows:

> "The owner's policy of liability insurance must comply with the following requirements:

"1. It shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted.

"2. *It shall insure the person named therein and any other person,* as insured, using the motor vehicle or motor vehicles with the express or implied permission of the named insured, *against loss from the liability by law for damages* arising out of the ownership, maintenance or use of the motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle as follows:

(a) Ten thousand dollars because of bodily injury to or death of one person in any one accident.

(b) Subject to the limit for one person, twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident.

(c) Five thousand dollars because of injury to or destruction of property of others in any one accident." (emphasis supplied)

This "omnibus clause" is a part of every motor vehicle liability policy issued. *Jenkins v. Mayflower Insurance Exchange,* 93 Ariz. 287, 380 P.2d 145 (1963). Section 28-1170 B removes the exclusion for drunk driving by implication. Section 28-1170 F (1) does so expressly. This latter section provides:

"The liability of the insurance carrier with respect to the insurance required by this chapter shall become *absolute* when injury or damage covered by the motor vehicle liability policy occurs. The policy may not be cancelled or annulled as to such liability by an agreement between the insurance carrier and the insured after the occurrence of the injury or damage, and no statement made by the insured or on his behalf and *no violation of the policy shall defeat or void the policy.*" (emphasis supplied)

B. THE "JENKINS" DECISION.

Jenkins v. Mayflower Insurance Exchange, supra, holds that an insurer cannot set up a restrictive endorsement or exclusion negating coverage when the automobile is operated by a member of the Armed Forces other than the named insured. The Court reached this result by a specific holding that the "omnibus clause" prescribed by the Financial Responsibility Act is part of every motor vehicle liability policy and supersedes any such restrictive endorsements or exclusions. In the *Jenkins* case, the defendant insurance company set up a technical defense relying upon what the Court called the "artful distinction" between "motor vehicle liability policy" and "automobile liability policy". This distinction, the defendant argued, led to the conclusion that its policy was not a "certified" policy under the Financial Responsibility Act and the plain language of the statute requires the omnibus clause only in "certified" policies.

The Court flatly rejected this argument. The Court conceded that the cases cited by the defendant in support of its "artful" argument were, in fact, valid precedents. However, the Court pointed out that on the very day that the *Jenkins* opinion was decided, a decision was rendered in another case passing on the constitutionality of the Financial Responsibility Act. *Schecter v. Killingsworth,* 93 Ariz. 273, 380 P.2d 136 (1963). The Court then went on to quote from the *Schecter* decision the following passages:

> "The Financial Responsibility Act has for its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons . . . It is well recognized that the social objective of preventing financial hardship and possible reliance upon the welfare agencies of the state is a permissible goal of police power action . . . Further, these figures have no bearing whatsoever upon whether or not this

law was effective in achieving its *primary purpose*—the providing of security against uncompensated damages arising from operation of motor vehicles on our highways."

After quoting the above passages, the Court ended its decision with the following language:

"Where the basis upon which this act has been declared constitutional is 'preventing financial hardship and possible reliance upon the welfare agencies', we cannot constitutionally allow artful distinctions between 'motor vehicle liability policy', 'automobile liability policy' or 'policy of insurance' to defeat the purpose of the act. To do so would make our opinion in *Schecter v. Killingsworth, supra* a sham.

"We hold, therefore, that the omnibus clause is a part of every motor vehicle liability policy, by whatever name it may be called."

The Supreme Court was not called upon in the *Jenkins* case to decide the only real question which faces us on this issue. That case apparently did not involve a situation where the face amount policy limits were in excess of the Financial Responsibility limits. However, the public policy rationale quoted above suggests how the Court will answer this question if and when it is presented to the Court.

Despite the apparent intent and philosophy of the Supreme Court on this subject, the *holding* of the *Jenkins* case does not solve our problem except insofar as it compels the conclusion that the "drunk driving" exclusion is of no effect, at least up to the financial responsibility limits of $10,000/$20,000.

We are not without precedent in interpreting the particular policy which is the subject of this lawsuit. Such an interpretation was conducted by the California District Court of Appeal in *Financial Indemnity Co. v. Hertz Corpora-*

tion, 38 Cal. Rptr. 249 (April, 1964). In that case, Atlantic National sought to escape liability on the basis of an exclusion in the policy regarding non-permissive use. Following the reasoning of *Wildman v. Government Employees Insurance Company,* 48 Cal. 2d 31, 307 P.2d 359, the court struck the exclusion and held Atlantic National to be liable under the omnibus clause written into the policy by operation of the Financial Responsibility Statute of California. In so ruling, the court emphasized the difference between family or individual automobile insurance policies and "driverless car" liability policies issued by Atlantic National to outfits like Hertz:

> "Finally, unlike the usual case involving a family car where the named insured is generally the party who makes the primary and predominant use of the vehicle, in the instant case it is the innumerable but unknown number of future renters who will use and operate the vehicle and the owner, Hertz, whose use thereof will be secondary and casual. Since Hertz is engaged in the business of placing its cars in the hands of others for a profit determined solely by the miles driven, without regard to the identity of the actual operators while they are in use, *it should not be allowed to avoid providing the coverage required by the public policy of this State by the simple expedient of inserting an obscure clause in its lease agreement prohibiting certain types of operation.*
>
> "For example, no one would argue today that Hertz or Atlantic could avoid providing the insurance coverage required by law if the vehicle were operated by a renter 'in violation of law as to age or by a driver or renter who has given a fictitious name or false age or address', as is also provided in the lease agreement. The public policy relating to an owner's liability and coverage for permissive users would be wholly vitiated by such a ruling." (Emphasis added)

We submit that the reasoning of the California court in drawing the distinction between individual policies and "driverless car" policies is particularly cogent.

In the very last paragraph of the decision in *Financial Indemnity v. Hertz, supra,* the court states:

> "It has been stated that where the owner gave specific instructions as to the manner of operation, the speed and *care in driving,* etc., it would not be reasonable to uphold that the use was without permission if any of these detailed instructions were violated, for the liability of the owner could in almost every case be defeated by some showing of violation of authority." (Citations) (Emphasis added)

Certainly instructions as to drinking relate to "care in driving", the very type of instruction condemned by this court.

A state with a statute identical to the Arizona statute is Wisconsin. That state, like Arizona, adopted the Uniform Motor Vehicle Safety Responsibility Act in Wisconsin Statutes, Sections 85.09(21) (f) (g) (h). Since the legislation is identical, the Wisconsin cases should be persuasive in Arizona. Directly in point is the case of *Laughnan v. Aetna Casualty & Surety Company,* 1 Wis. 2d 113, 83 N.W. 2d 747.

In that case, a garage owner's former employee used the garage without permission to paint and weld a car for his own customer. He was involved in a collision while returning the car to its owner, injuring the plaintiff, a passenger in another car. Aetna, the garage owner's insurer, investigated the accident and concluded that the garage owner's policy did not apply. Subsequent to the denial of coverage, the defendant filed with the Wisconsin Commissioner of Motor Vehicles a standard form, *admitting* coverage. (The Wisconsin law differs from the Arizona

law only in that in Wisconsin a form must be affirmatively filed with the Commissioner admitting coverage, whereas in Arizona the failure to file the form admits coverage.) It was conceded by both parties at the trial that the form was filed as the result of an administrative error. The trial court ruled that the admission of coverage, despite the fact that it was unintentional, estopped Aetna from denying coverage thereafter. The trial court was affirmed by the Supreme Court of Wisconsin in a decision holding that the filing of the standard form constitutes a conclusive and irrevocable admission of coverage. The court announced that the purpose of the provision was to give a wholesome inducement to insurance carriers to make careful investigation so that they will not, by their mistakes, cause the license and registration of a tort-feasor to remain unsuspended.

The striking significance of this decision for our purposes stems from the fact that, at the time of the decision, the Financial Responsibility limits under the Wisconsin law were $5,000/$10,000. The face amount of Aetna's limits in this particular case were $10,000/$20,000. There, as in the instant case, the insurance company alleged as its principal line of defense that there was no coverage. As an alternative defense Aetna urged that at the most, it should be held to be liable only up to the Financial Responsibility limits. The issue in the instant case was therefore presented squarely to the Supreme Court of Wisconsin.

In unequivocal language, the Wisconsin Court held that the policy limits, rather than the Financial Responsibility limits, were applicable:

> "We consider that the SR-21 (the Wisconsin equivalent of the Arizona SR-1A) brings before the court the *actual policy* therein described, extended to include in its provisions the individual whom the SR-21 asserts is covered, and it is *that* policy which is henceforth to

> be dealt with. Its terms are not to be varied to the insurer's advantage by the insurer's failure to correct the printed form in its recitation of policy limits. Aetna merely signed and filed the official form, but it did not thereby acquire policy limits different *from those expressed in the actual policy* which the SR-21 declared protected the insured." (Emphasis supplied)

Clearly, this decision goes decidedly further than we are asking this Court to go. If an administrative error renders effective a liability insurance policy with its full policy limits, then it seems axiomatic that the striking of an exclusion which is abhorrent to the announced public policy of the State of Arizona should not operate to reduce the policy limits by $90,000.00, and thereby render the insurance company liable for only a nominal rather than the intended amount.

The Supreme Court of California has also decided this issue and is in complete accord with Wisconsin. *Continental Casualty Co. v. Phoenix Construction Co.,* 296 P.2d 801 (Sup. Ct. of Calif., 1956). In this decision, the facts were particularly analogous to those of the instant case. It was also a suit for declaratory relief in which contesting insurance companies were seeking determination of both the order and the limits of their respective contractual obligations. The accident victim, Leming, was injured in a collision caused by the negligence of a construction truck driver. The truck driver's employer was insured by Transport Indemnity which defined "insured" as including only the named insured and "any partner, executive officer, *managing employee,* director or stockholder thereof . . ." Transport Indemnity took the position that the truck driver could not be held to be a "managing employee".

The court, relying primarily on the California Financial Responsibility law and its "omnibus clause" provision, substantially identical with that of Arizona, ruled that Transport Indemnity was liable. Again, of particular significance for our purposes, the court took the position that excess coverage, written in this case by Lloyds of London, was also applicable, rejecting the argument that liability imposed by the statute would only be up to the statutory limits rather than the face limits of the basic and excess policy.

In reaching its decision, the court ruled first as follows:

> "(The Financial Responsibility law) is intended for the benefit of drivers and owners of motor vehicles as a means of forestalling suspension of the license of the driver and of the registration of the vehicle or vehicles, and, more fundamentally, designed to give monetary protection to that ever changing and tragically large group of persons who while lawfully using the highways themselves, suffer grave injury through the negligent use of those highways by others. Such a law is remedial in nature and in the public interest is to be liberally construed to the end of fostering its objectives." (p. 808)

The court then went on to quote in full the "omnibus clause" language of the statute, as well as the other requirements thereof, all of which quoted provisions are materially identical with those of the Arizona Statute. The court then makes the interesting point (p. 808) that although the Financial Responsibility Statute does not in so many words make mandatory the procuring of a liability insurance policy prior to the first accident, the California Highway Carriers Act contains a compulsory insurance provision which made insurance mandatory for the particular employer in this case. Transport Indemnity and Lloyds argued that these provisions did not require that the truck *driver's*

liability be covered. The court rejected this argument as follows:

> "It is, however, our conclusion reached in the light of all *pertinent provisions of the law* and the terms of the policy, that Transport's coverage fairly includes Mason's operation of (employer's) truck and that its liability is direct to Mason as an insured as well as to (employer) as a named insured." (p. 809)

This analysis takes on particular significance, for our purposes, because of the provisions of A.R.S. § 28-324. This section makes insurance mandatory for owners engaged in the business of renting motor vehicles without a driver. It prohibits the registration of such motor vehicles until public liability insurance has been procured "in an amount *of not less* than $5,000.00 for any one person injured or killed and $10,000.00 for any number more than one injured or killed in any one accident". So we see that the Atlantic National "driverless car" insurance policy in this particular case is pursuant to a compulsory insurance law under A.R.S. Section 28-324.

It would seem apparent that the Legislature, in making insurance compulsory in the "driverless car" rental situation, demonstrated an intent to impose stronger and broader insurance requirements than in the normal individual or family car situation where insurance is not compulsory. And this distinction makes a great deal of sense when dealing with national car rental organizations such as Hertz as was pointed out by the California court in *Financial Indemnity Co. v. Hertz, supra.*

The *Continental Casualty* case restates, in reaching its decision, all pertinent rules of both contractual and statutory construction:

> "It is elementary in insurance law that ambiguity or uncertainty in an insurance policy is to be resolved

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

JOHN J. O'CONNOR III